



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1996

Mr. David Mendez  
Bickerstaff, Heath, Smiley,  
Pollan, Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR96-1774

Dear Mr. Mendez:

As counsel for Collin County, Texas, you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101127.

Collin County (the "county") received a request for records pertaining to its former fire marshal, Mr. Larry Bartlett, and a second request for all records of sexual harassment complaints. The county asserts that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.103, 552.107(1) and 552.117 of the Government Code. You have submitted representative samples of the information the county seeks to withhold from public disclosure.<sup>1</sup>

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

We consider whether the county has established that it is a party to litigation that is pending or reasonably anticipated. You inform us of litigation against the county brought by the following plaintiffs: Tammy Smith and Stuart Joynt, Jennifer Melton Bush, and Kim Dillard. In subsequent correspondence to this office, you inform us that Jennifer Melton Bush dismissed her lawsuit without prejudice. We conclude that the county has established that the lawsuits brought by Tammy Smith and Stuart Joynt and Kim Dillard are pending. Although you state that there is still the threat of litigation by Ms. Bush, we do not believe the county has established that litigation by Ms. Bush is reasonably anticipated.

You assert that litigation is reasonably anticipated in regard to two other matters. We conclude the county has not established that litigation is reasonably anticipated with regard to the information the county submitted at tabs 18, 19 and 20. We conclude the county established that litigation is reasonably anticipated with regard to the Bartlett information. See Open Records Decision No. 346 (1982) (litigation reasonably anticipated where attorney demands payment and threatens legal action).

We now consider in turn the relatedness of the representative samples of information to the pending and reasonably anticipated litigation. As for the Tammy Smith and Stuart Joynt litigation, we believe the information in tab 2, the personnel files of the plaintiffs, relates to the pending litigation.<sup>1</sup> However, the opposing parties have obviously seen much of the information in these files. Section 552.103 is not applicable to information the opposing party has seen or had access to any of the information. Open Records Decision Nos. 349 (1982), 320 (1982). You say tab 3 contains a representative example of the types of documents in the plaintiffs' EEOC charge file. We conclude the EEOC charge file is related to the pending litigation. You state that the letter at tab 4 relates to factual issues in the pending lawsuit. You say tab 5 contains a sample of internal affairs division files of investigations of sexual harassment complaints. We conclude that section 552.103 applies to the information at tabs 4 and 5. Finally, section 552.103 applies to the attorney work product information at tab 6. You may withhold from disclosure the information to which section 552.103 is applicable to the extent the information has not been seen by the opposing party.

We have reviewed the information the county submitted that pertains to the Dillard case and conclude that the information in tabs 15 and 16 relate to the pending litigation. We note, however, that although you say tab 16 includes a sample of the personnel files of

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<sup>1</sup>You inform us that the county will release the tab 1 documents to the requestor.

Kim Dillard and other county employees, we were unable to locate such information and cannot rule on its required public disclosure. Section 552.103 does not apply to the information at tab 17 as you inform us that the county has released this information to the opposing party in the litigation. *See id.*

Having reviewed tabs 22 through 25, we conclude that all of the information at tabs 23, 24 and the marked information in tab 25 relate to the reasonably anticipated litigation. However, section 552.103 does not apply to the tab 22 information since the opposing party has apparently seen this information.

As for all of the information to which section 552.103 is applicable, we remind you that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We turn to the information to which section 552.103 is not applicable. We first consider your arguments under common-law privacy. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We conclude that the county must withhold portions of the requested information based on section 552.101 in conjunction with the common-law right to privacy. *See* Open Records Decision No. 600 (1992) (certain financial information); *Morales v. Ellen* 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (certain information pertaining to sexual harassment complaints); 8 U.S.C. § 1324a(b)(5) (employment eligibility form I-9). We have marked the documents accordingly.

You also assert that section 552.101 in connection with "Title VII of the Civil Rights Act and relevant disclosure regulations" excepts from required public disclosure the EEOC charge files for the Bush, Smith and Dillard cases, tabs 13, 3 and 16. You cite no specific statutes or regulations that would apply to this information. Accordingly, we conclude that the county has not established that the information is made confidential by statute or regulation.<sup>2</sup>

Section 552.107(1) excepts from required public disclosure information within the attorney-client privilege. *See* Open Records Decision No. 574 (1994). It applies to information that reveals client confidences or containing legal advice or opinion. *See id.* We have marked the documents accordingly.

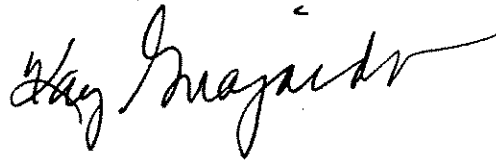
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<sup>2</sup>*See* Open Records Decision No. 245 (1980) (non-disclosure provisions of 42 U.S.C. § 2000e-5(b) apply only to agents or employees of Equal Employment Opportunity Commission).

Section 552.117 of the Government Code applies to the home address, home telephone number, social security number or family information about a current or former official or employee of a governmental body or of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, or a security officer commissioned under Education Code section 51.212. A current or former official or employee of a governmental body must have complied with the procedures for choosing to prohibit access to the information as provided in Government Code section 552.024 at the time the governmental body received the request for information in order to enjoy the protection of section 552.117. *See* Open Records Decision No. 530 (1989). The county must withhold from public disclosure the information subject to section 552.117 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Kay Guajardo', with a stylized flourish at the end.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 101127

Enclosures: Marked documents

cc: Ms. Michelle Mitchell  
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(w/o enclosures)